IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1579 of 2007
With
SPECIAL CRIMINAL APPLICATION No. 1580 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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MANUBHAI BHIKHABHAI VALAND - Applicant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR BHUNESH C RUPERA for Applicant(s) : 1,
MR DIPEN DESAI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1, 4,
MR PR NANAVATI for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 26/09/2007

ORAL JUDGMENT :

1. The petitioner has approached this Court under Articles 226 and 227 of the Constitution of India upon being aggrieved by the orders dated

8.8.2007 of Sessions Court, Ahmedabad in Criminal Miscellaneous Applications No.2702 and 2703 of 2007 granting anticipatory bail under section 438 of the Code of Criminal Procedure, 1973 (for short "the Code"). The petitioner, as original complainant, made serious grievances against lackadaisical approach of learned Additional Sessions Judge, Ahmedabad in making the impugned orders even as complaints of serious offences punishable under sections 467, 468, 471 and 120-B of the Indian Penal Code, 1860 were registered in the form of M.Cases No.17 and 18 of 2007 on 22.5.2007 in Naroda Police Station, Ahmedabad and investigation was being carried on in an apparently leisurely manner. The factual propositions on the basis of which the impugned orders were made, namely that the complaint was delayed by eight years and the delay was not explained or that there was a dispute of civil nature among the parties or that no *prima facie* case was made out against the respondents-beneficiaries of the impugned order, were not borne out by the record and were perverse, according to the submission.

2. Learned counsel Mr.P.R.Nanavati, appearing for the respondents concerned, submitted that, in view of the fact that the

impugned orders were already executed and carried out in the sense that the respondents concerned were formally arrested and released in terms of the impugned orders, further discussion of the merits of impugned orders may not be necessary. And, the respondents were agreeable to have their regular bail applications, which are already filed and where the present petitioner would have the opportunity of being heard, decided on their own merits after perusal of all the relevant material which may be produced by the parties.

3. Learned A.P.P. fairly conceded that there was some laxity on the part of the investigating agency insofar as the original documents on which signatures were alleged to have been forged were not recovered in time, nor were any of the respondents arrested for further and proper investigation, nor was any report of handwriting expert available so far. He also conceded to the fact that the day on which this Court admitted the present petitions, i.e. 24.8.2007, the respondents had come to be formally arrested and the present petitions were practically made infructuous.

4. In the above circumstances, it may be unnecessary to examine the impugned orders on

merits or to examine the material so far collected during the course of investigation for expressing a *prima facie* opinion about commission of any offence or involvement of any of the respondents. It is, however, important that at the time of hearing of regular bail applications of the respondents, the court is properly assisted in a case in which allegations of serious offences are made. Learned A.P.P. stated in that regard that the investigating agency would take the investigation seriously and file a proper affidavit in the trial court to oppose the regular bail applications. There was a limited consensus to the effect that the regular bail applications of the respondents should be heard without being influenced by the fact that the earlier applications for anticipatory bail were granted and the orders therein were not set aside by this court. Learned counsel Mr.Rupera, appearing for the petitioner, stated that appearance of an advocate of the petitioner shall be filed in the regular bail applications of the respondents latest by 27.9.2007.

5. Accordingly, the present petitions are disposed without expressing any opinion about the merits of impugned orders with the clarification that the application for regular bail by any of

the respondents shall be heard and disposed on its own merits, after proper application of mind to the material which may be placed on record and after affording proper opportunity of being heard to the petitioner herein. With these observations, the petitions are disposed and Rule is discharged with no order as to costs. Direct service is permitted.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)